



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648- XD136

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries;

Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Regional Fisheries Office, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. To enable the harvest of herring research set-aside (RSA) quota, the EFP applicant has requested that commercial fishing vessels be allowed to fish during Federal management area quota closures and Area 1A and 1B seasonal sub-ACL closures. In addition, the applicant has requested authorization to harvest RSA quota irrespective of a river herring/shad catch cap, if implemented under the Atlantic Herring Fishery Management Plan (FMP), and to carryover unharvested RSA quota into future years. This EFP would be for the exclusive purpose of harvesting RSA quota to fund research awarded under the Atlantic Herring Research Set-Aside Program. The research intends to characterize and reduce river herring catch in the herring midwater trawl fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit written comments by any of the following methods:

- Email: nero.efp@noaa.gov. Include in the subject line "Comments on the SMAST River Herring EFP."
- Mail: John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope " Comments on the SMAST River Herring EFP."
- Fax: (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Policy Analyst, 978-281-6326, Ryan.Silva@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS granted a herring RSA award to the University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST) under the 2014/2015 Herring RSA Program for their research project titled "Characterizing and Reducing River Herring Incidental Catch in the Atlantic Herring Midwater Trawl Fishery." SMAST was awarded 936 mt from Area 1A; 138 mt from Area 1B; and 900 mt from Area 2 in 2014 and 2015. The research project will: 1) Provide for portside sampling of at least 50 percent of midwater trawl landings in Massachusetts; 2) estimate the total amount of river herring caught by midwater trawl vessels in 2014 and 2015; 3) describe the length, number, and maturity of river herring

incidental catch by location and time; 4) continue near real-time river herring avoidance through midwater trawl fleet communication systems; and 5) place net sensors on midwater trawl gear. None of these five research activities require exemptions from the Herring FMP regulations, though exemptions from area catch limits and closures are required as discussed below. Through the specifications-setting process, the Herring FMP established sub-ACLs, and set RSA equal to 3 percent of each sub-ACL. For 2014 and 2015, the RSA allocations are: Area 1A – 936 mt; Area 1B – 138 mt; Area 2 – 900 mt; and Area 3 – 1260 mt. As such, the 2013-2015 Herring FMP specifications analyzed the RSA allocations as part of the sub-ACLs and overall herring fishing activity.

To facilitate the harvest of their RSA quota award and fund this project, SMAST submitted a complete application for an EFP on January 10, 2014, to conduct commercial fishing activities that the regulations would otherwise restrict. SMAST has requested that vessels be authorized to harvest herring RSA quota after a herring management area quota has been caught and the fishery is limited to 2,000 lb (0.91 mt) per trip, and allow vessels to harvest RSA quota in Management Areas 1A and 1B between January through May, and January through April, respectively, when the areas are closed to commercial harvest. SMAST also requested exemption from the river herring/shad catch cap, which is under development as part of Framework 3 to the FMP, and authorization to carryover unharvested RSA quota into future years. Through correspondence leading up to the submission of the EFP application, SMAST was notified that RSA vessels are typically authorized to fish during directed fishery closures and in excess of possession limits. Consequently, their requested exemption from area quota closures and the Area 1A and 1B seasonal sub-ACLs was likely. However, their requested exemption from the river

herring/shad catch cap and authorization to carryover unharvested RSA quota are not possible. The review of Framework 3 is ongoing, and the regulations that would establish the river herring/shad catch cap do not yet exist. In addition, should the cap be implemented, the Council did not reserve river herring/shad catch for RSA quota harvest. Authorizing vessels to harvest RSA quota after the river herring/shad cap has been attained would likely cause the river herring/shad cap to be exceeded, which would be contrary to experimental fishing regulations at 50 CFR 618.12, which stipulate that an EFP cannot be issued if it would cause a quota to be exceeded. Additionally, the Council did not include the RSA program under the carryover provision that was established for the commercial fishery under Framework Adjustment 2 to the FMP, and herring regulations at 50 CFR 648.207(e) require RSA to be used in the same fishing year in which it is distributed.

NMFS has preliminarily determined that the SMAST application contains all of the required information. Except as noted above, NMFS has preliminarily determined that the purpose, design and administration of the exemption is consistent with the Herring FMP's management objectives, the MSA, and other applicable law. Further, subject to the conditions noted below, granting the exemption is not expected to have a detrimental effect on the fishery resources, cause any quota to be exceeded, or create any significant enforcement problems. Therefore, the application warrants further consideration.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed

research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 21, 2014.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2014-06638 Filed 03/25/2014 at 8:45 am; Publication Date: 03/26/2014]